PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

Appropriation of Payments

The House of Lords has reaffirmed the well-established rule, that when a debtor pays money to his creditor without appropriating it to particular items of indebtedness, the right of appropriation devolves upon the creditor, and he may exercise that right up to the very last moment, by action or otherwise, the application of the money being governed, not by any rigid rule of law, but by the intention of the creditor, expressed, implied, or presumed; and that the rule in *Clayton's Case*, 1 Meriv. 585, 1816, that in case of a running account the items are to be set off against each other in their order, does not apply to a case where there is no running account, or where from an account rendered, or other circumstances, it appears that the creditor intended not to make any appropriation, but to reserve the right to do so: *Cory Brothers & Co.* v. *Owners of Turkish Steamship "Mecca,"* [1897] A. C. 286.

Building Associations, Usurious Interest, Constitutional Law

The Court of Appeals of Kentucky has recently held, in accord with its prior decisions, that § 864 of the Kentucky Statutes, which recognizes the right of a building association to require borrowing members to pay dues or premiums in addition to interest at the rate of six per cent., the rate fixed by law as to all other borrowers of money, violates § 59 of the constitution, forbidding the general assembly to pass local or special laws "to regulate the rate of interest," since the transaction is in effect a borrowing and lending of money, and the dues or premiums exacted are in the nature of interest; and that it also violates § 3 of the bill of rights, which provides that "no grant of exclusive separate public emoluments or privileges shall be made to any man or set of men, except in consideration of past services:" *Simpson* v. *Kentucky Citizens' Bdg. & Loan Assn.*, 41 S. W. Rep. 570. It has also held that such a loan by a foreign building association, secured by mortgage on land in Kentucky, is a Kentucky loan, and governed by its usury laws: *Pryse* v. *Peoples' Bdg., Loan & Sav. Assn.*, 41 S. W. Rep. 574.

Collateral Inheritance Tax, Constitutionality, Exemptions

The Supreme Court of California has declared that the collateral inheritance tax law of that state (Stat. 1893, p. 193), is not unconstitutional, though it does not tax inheritances by brothers and sisters of the deceased, while taxing inheritances by the children of such brothers and sisters, and though it exempts inheritances not exceeding $500: *In re Wilmerding's Estate*, 49 Pac. Rep. 181.

Conspiracy, Trust, Right of Action

The fact that an association has been formed for the purpose of controlling or fixing the price of merchandise or property, in violation of statute, gives no right of action against the association to one to whom it refuses to sell such merchandise or property: *Brewster* v. *Miller*, (Court of Appeals of Kentucky,) 41 S. W. Rep. 301.

Constitutional Law, Costs in Criminal Cases

The Supreme Court of Tennessee has recently held constitutional an act of the legislature providing that the state or county should only be liable for costs in certain classes of criminal cases, although it was attacked on the grounds (1) that it worked a great hardship on officers and witnesses; (2) that it required their services without compensation; (3) that it was not general; (4) that it deprived the accused of a fair and impartial trial, by putting a premium on conviction; and (5) that it amended previous laws relating to fees and costs without naming them: *State* v. *Henley*, 41 S. W. Rep. 352.

The important parts of the statute in question are as follows: "Neither the state of Tennessee, nor any county thereof, shall pay or be liable in any criminal prosecution for any costs or fees hereafter accruing, except in the following classes of cases:

"(1) Cases of homicide, rape, robbery, burglary, arson, embezzlement, incest or bigamy, when the prosecution has proceeded to a verdict in the circuit or criminal court;

"(2) Cases under the small offense law where the defendant has submitted before a justice of the peace and been sent to the workhouse, and

"(3) All cases where the defendant has been convicted in a court of record and the execution issued upon the judgment against the defendant has been returned *nulla bona*: provided

"That neither the state of Tennessee, nor any county

thereof, shall be liable for, or pay any costs in any criminal case where security has been accepted by the officer taking the security, and an execution afterwards returned *nulla bona* as to the defendant and his securities.

. . . . . .

"Sec. 2. Be it further enacted, that neither the state of Tennessee, nor any county thereof, shall pay or be liable in any criminal case or prosecution for the fees, costs, or mileage which may hereafter accrue in favor of any witness who shall, at the time of his attendance as such witness, before any court, grand jury, or magistrate, reside within five miles of the place where he attends as such witness."

Corporations, Reorganization, Rights of Creditors

Creditors of a corporation that has made an assignment for the benefit of creditors release their rights under the assignment when they consent to a plan of reorganization, and accept bonds of the reorganized company in payment of their claims: *First Natl. Bk. of Chattanooga, Tenn.*, v. *Radford Trust Co.*, (Circuit Court of Appeals, Sixth Circuit,) 80 Fed. Rep. 569.

Directors, Failure to File Report

A provision in a general corporation law that directors must file an annual report of the condition of the corporation, and that on failure to do so they shall be liable for the debts of the company contracted within a specified time is germane to the subject of the act as expressed in the title "an act to provide for the formation of corporations," and the act is not unconstitutional on that ground: *Ludington* v. *Heilman*, (Court of Appeals of Colorado,) 49 Pac. Rep. 377.

Officers, Liability for Illegal Dividend, Survival

Wheeler, Dist. J., of the Circuit Court for the Southern District of New York, has ruled that the liability imposed by the statutes of Maryland, (Code Pub. Gen. Laws, Art. 23, §§ 67, 69,) on the directors and officers of a corporation who declare dividends rendering the corporation insolvent or impairing its capital, or who make loans to stockholders, is not a liability for wrongs to property rights and interests, such as that the cause of action therefor survives against the representatives of a deceased director or officer, under the statutes of New York, (2 Rev. Stat. N. Y. p. 447, § 1): *Boston & M. R. R. Co.* v. *Graves*, 80 Fed. Rep. 588.

Sole Owner of Stock, Rights of Transferee of Property

In a recent case in the Court of Civil Appeals of Texas, one M., who was the president and general manager and owned all the stock of a corporation, except a few shares which belonged to his ward, conveyed, in his individual capacity, to his son, certain real estate of the corporation by a general warranty deed, purporting to grant a fee simple, in consideration of a sum due the son from the estate of his mother, the grantor's wife. For several years prior to the conveyance, the corporation had ceased to do business, or keep up its organization. Under these circumstances, it was held that the grantee was the "sole, absolute and unconditional owner" of the property in fee, within the meaning of a policy of fire insurance upon the premises: *Phoenix Assur. Co. of London* v. *Deavenport*, 41 S. W. Rep. 399.

This is consistent with the decision in *McElroy* v. *Minnesota Percheron Horse Co.*, 71 N. W. Rep. 652, 1897, 36 AM. L. REG. N. S. 511. Such cases are not an exception to the general rule, that the ownership of all of the stock of a corporation does not dissolve the corporation, or vest the title to its property in the sole owner, but rest on a different principle.

County, Liability for Acts of Officers

When a sheriff, having a warrant for the arrest of a man charged with larceny, takes a citizen's horse, and pursues and overtakes the felon, but in doing so overdrives and injures the horse, the county is not liable for its value: *Randles* v. *Waukesha Co.*, (Supreme Court of Wisconsin,) 71 N. W. Rep. 1034.

Death, Presumption, Will, Construction

The Supreme Court of Rhode Island has reasserted the settled rule, that when two or more persons perish in the same disaster, and there is no way of determining which died first, the presumption, as far as the right of succession to their estates is concerned, is that all died at the same moment; and holds (1) that when three testatrices (sisters) die in this manner, a bequest or devise from one to another does not take effect; and (2) That as in the case in hand each left a will devising all her estate to her two sisters, directing that after the decease of the last surviving sister, $500 each should be paid to two nieces, and $200 to one S., out of the proceeds remaining after payment of debts, the surviving niece, (one having died during the lifetime of the sisters,) was entitled to $500 and

S. to $200 out of the personal estate of each of the three sisters, while their heirs were entitled to the residue of that and to the real estate, as if no will had been made: *In re Wilbor*, 37 Atl. Rep. 634.

Under the laws of Washington, which provide that "any ballot or parts of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted; provided, that when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges of election to count such part," (Laws 1895, p. 393, § 10,) that "no ballot shall bear any impression, device, color or thing designated to distinguish such ballot from other legal ballots, or whereby the same may be known or designated . . . ," (Laws 1895, p. 393, § 11,) and that no ticket shall be lost for want of form, or mistake in initials of names, if the board of judges can determine to their satisfaction the person voted for and the office intended, (Gen. Stat. Wash. § 413,) no ballot is vitiated by marks, other than those required by statute, made by a voter in an honest effort to express his choice, or by a variance from the prescribed method of marking the ballot, where the intention is not apparent; and consequently ballots on which the cross is placed at the left of the candidate's name, instead of at the right, in which two crosses, instead of one, are placed opposite the name, in which a cross is placed opposite one name, and the name of the opposing candidate is erased, in which a cross is placed after the name of each of two opposing candidates, and one of those marks is erased or scratched over, and in which the words "yes," "no," "for" or "against" are written opposite questions to be voted on, are valid. But, on the other hand, ballots are vitiated by any marks which obviously were not made with any intention to express the choice of the elector; and hence ballots with the words "Rats," "don't want any king," and the names of persons not candidates written on them, are void: *State* v. *Fawcett*, (Supreme Court of Washington,) 49 Pac. Rep. 346.

Elections, Ballots

The Supreme Court of Tennessee has very justly decided, that if a blind man, believing in good faith that he is submitting his case to the proper officer, allows an unauthorized person to mark his ballot, the ballot is not void under a statute (Acts Tenn. 1890, c. 24, § 16,) which provides that only the officer holding the election can lawfully mark ballots for persons disabled from marking them themselves: *Moore* v. *Sharp*, 41 S. W. Rep. 587.

Disability

Eminent Domain, Condemnation of Land of Married Woman

The Supreme Court of Texas recently ruled that the taking of land for public use is not in the nature of a conveyance, but is the exercise of the superior title of the government; and consequently the appropriation of the lands of a married woman is completed when the proper authority decides to take the land and pays for it, no matter in what mode payment is effected, compliance with the statutory requirements as to conveyance by married women being unnecessary. As a corollary of this, it follows that a married woman may, with the consent of her husband, waive the invalidity of a condemnation of her separate property for public use, by accepting the compensation awarded, without executing a waiver in the statutory form: *City of San Antonio* v. *Grandjean*, 41 S. W. Rep. 477.

Evidence, Letters

A returned letter is inadmissible to prove that the person to whom it was addressed did not live in the place to which it was directed: *Dawson* v. *State*, (Court of Criminal Appeals of Texas,) 41 S. W. Rep. 599.

False Pretenses

An officer of a corporation, who, by false and fraudulent statements, induces certain persons to purchase worthless stock in the corporation, is guilty of obtaining money under false pretenses, though the title to the money obtained passed to the corporation; and it is no defense that after the corporation obtained the money he received none of it: *Commonwealth* v. *Langley*, (Supreme Judicial Court of Massachusetts,) 47 N. E. Rep. 511.

Fraudulent Conveyance, Bankruptcy, Preference

In a recent case before the Court of Appeal of England, *Trustee of the Property of New, Prance & Garrard* v. *Hunting*, [1897] 2 Q. B. 19, affirming [1897] 1 Q. B. 607, a bankrupt, two days before his bankruptcy, executed a deed, by which he conveyed an estate to a third person upon trust to raise thereout by sale or mortgage £4200, and to make good therewith divers breaches of trust which he had committed in respect of certain scheduled estates of which he was trustee. This was held not to be a fraudulent preference, because the object of the bankrupt in executing it was not to prefer some creditors to others, but to shield himself from the consequences of the breaches of trust committed by him.

Gambling Transactions, Principal and Agent, Liability as Agent

When a broker receives money from his principal to be used for gambling in futures, and actually deals with third parties, from whom he realizes profits in the course of these illegal transactions, he is responsible, as agent, to his principal, as for money had and received for the principal, for the amount of the profits thus realized: *Lovejoy* v. *Kaufman*, (Court of Civil Appeals of Texas,) 41 S. W. Rep. 507.

Garnishment, Property of Criminal

The Supreme Court of Tennessee has adopted the prevailing doctrine, that when an officer of the law, acting either under police rules or on his own responsibility, takes from a prisoner personal property in no way connected with the criminal charge, either for its safe keeping, or to remove from his control that which might be used in effecting his escape, such property is not liable to garnishment in the officer's hands, or in those of any one with whom he deposits them: *Hill* v. *Hatch*, 41 S. W. Rep. 349.

General Average, Bond, Statement

A shipowner may make out his own average statement, and is not bound to employ an average stater (*Americanicè*, adjuster,) either at the port of discharge or elsewhere; and when, by an average bond executed at the port of discharge, the consignees of cargo undertake to furnish to the shipowners a correct account and particulars of the value of the goods delivered, in order that the amount of average contribution to which they are liable may be ascertained and adjusted "in the usual manner," these words do not imply as a condition of the obligation that the shipowners shall employ an average stater at the port of discharge: *Wavertree Sailing Ship Co.* v. *Love*, (Judicial Committee of the Privy Council,) [1897] A. C. 373.

Infant, Apprenticeship

An infant can make a binding contract of apprenticeship to learn a useful trade, and cannot avoid that contract on becoming of age; and if he violates it, he will be bound by a clause therein providing for the retention and forfeiture of part of the wages due him: *Padey* v. *American Ship-Windlass Co.*, (Supreme Court of Rhode Island,) 37 Atl. Rep. 706.

Injunction, Restraining Action in Other State

The courts of New York will not enjoin the prosecution of an action between citizens of New York in another state, merely because the rule in that state as to evidence of transactions with decedents is more liberal than in New York, and the action involves such a transaction; the difference is merely one of evidence, not of substantive right: *Edgell* v. *Clarke*, (Supreme Court of New York, Appellate Division, First Department,) 45 N. Y. Suppl. 979.

Indemnity, Insurance, Public Policy

The Supreme Court of New Jersey has recently decided, that a contract to indemnify a common carrier of passengers against losses occurring from injuries to passengers carried by it is not invalid as against public policy, on the ground that it covers losses resulting from their negligence or the negligence of its servants: *Trenton Pass. R. R. Co.* v. *Guarantors' Liability Indemnity Co.*, 37 Atl. Rep. 609.

Liability Insurance, Accrual of Liability

Under a policy providing for payment to the insured of all sums which he "may become liable for in damages" for personal injuries, and that the insurer shall have charge of all litigation against the insured for such damages, the liability of the insurer accrues when that of the insured for certain damages has been finally determined, though he has not paid the same; but the liability of the insured for damages is not determined by a judgment against him, so as to render the insurer liable, while an appeal from the judgment is pending: *Fidelity & Casualty Co.* v. *Fordyce*, (Supreme Court of Arkansas,) 41 S. W. Rep. 420.

Life Insurance, Payment of Premiums with Stolen Funds

The Supreme Court of New York, Appellate Division, First Department, has lately held, reversing 41 N. Y. Suppl. 839, (36 AM. L. REG. N. S. 146,) that when one of the intermediate premiums on a life policy payable to the wife of the assured was paid with her money, the fact that the other premiums were paid with stolen funds does not give the person from whom the funds were stolen a right to the entire proceeds of the policy, subject to a lien in favor of the beneficiary, for the sum contributed by her, but entitles the latter to her *pro rata* share of the proceeds: *Dayton* v. *H. B. Claflin Co.*, 45 N. Y. Suppl. 1005.

The Court of Appeal of England has affirmed the decision of Collins, J., in *Universo Ins. Co. of Milan* v. *Merchants'*

Marine Insurance, Payment of Premium

Marine Ins. Co., [1897] 1 Q. B. 205, (36 AM. L. REG. N. S. 264,) that the rule of law, founded on mercantile custom, by which the broker, and not the assured, is liable to the underwriter for the premium on a policy of marine insurance, is not limited to the ordinary form of Lloyd's policy, but extends also to a "company's policy," which contains a promise by the assured to pay the premium: *Universo Ins. Co. of Milan* v. *Merchants' Marine Ins. Co.*, [1897] 2 Q. B. 93.

Joint Resolution, Title, Effect

The Supreme Court of South Dakota has recently decided, that Article 13, § 19, of the constitution of that state, which provides that the presiding officer of each house shall sign all bills and joint resolutions "after the titles have been publicly read," presupposes that a joint resolution will have a title, though it does not expressly require it, and consequently, when the title to a joint resolution is adopted after due consideration, it may be referred to and considered by the courts for the purpose of ascertaining the intention of the legislature in adopting the resolution, if there is any doubt as to what that intention is, just as the title of a statute, which, under constitutional provisions, now governs the enacting part: *Lovett* v. *Ferguson*, 71 N. W. Rep. 765.

Libel

A publication that describes a fire in the plaintiff's building, and also refers to two previous fires in the same building, concluding with the following words, "Every fire in this building has started on the upper floor, and twice in Reid's printing establishment," contains no defamatory language, and is not capable of meaning to charge the plaintiff, Reid, the owner of the printing office, with incendiarism; and when words are not in their nature defamatory, the publisher is not liable therefor, though special damages result: *Reid* v. *Providence Journal Co.*, (Supreme Court of Rhode Island,) 37 Atl. Rep. 637.

Negligence, Cause of Action, Practical Joke, Nervous Shock

In a curious (and unprecedented) case before Wright, J., of the Queen's Bench Division, the defendant, by way of a practical joke, falsely represented to the plaintiff, a married woman, that her husband had met with a serious accident, and that both his legs were broken. This statement was made with the intent that it should be believed. The plaintiff believed it, and in consequence suffered a nervous shock which brought on an attack of illness. Upon these

facts the court held that she had a good cause of action: *Wilkinson* v. *Downton*, [1897] 2 Q. B. 57.

News Agency, Unpublished Information, Copying by Rival, Injunction

It has been recently decided by Stirling, J., of the Chancery Division, that a news agency may collect information from a public source and transmit it to subscribers to whom it is new upon the terms that they shall not communicate it to third parties; and a court of equity will enjoin a subscriber from communicating such information to a third party in breach of his contract, and will also enjoin a third party from inducing a subscriber to break his contract by supplying him with such information with a view to publication: *Exchange Telegraph Co., Ltd.*, v. *Central News, Ltd.*, [1897] 2 Ch. 48.

The news was communicated by ticker; and the contract provided that "the news supplied by the company is to be used only in the newspapers or posted only in the club, news-room, office, or other place at which it is delivered. No copy of it shall be made for any other purpose than for such publication, and it shall not be transmitted, communicated, or delivered to any other party or parties by messenger, telegraph, telephone, or otherwise, nor shall the subscriber assign the benefit of the whole or part of this agreement, nor let upon hire the instrument or the right to use it nor in any way part with the possession of the instrument without the written consent of the company."

The only case at all similar to this is that of the *Exchange Tel. Co.* v. *Gregory*, [1896] 1 Q. B. 147, (35 AM. L. REG. N. S. 258;) when the same plaintiff secured an injunction to restrain the defendant from publishing the news collected by it, which had been surreptitiously obtained by the latter.

Patents, Invention by Employe, Implied License for Use by Employer

An employe, who, while earning weekly wages, constructs with his employer's tools and materials, in his shop, machines which the latter uses as part of his tools, without knowledge of any objection thereto, cannot, after obtaining a patent, enjoin his employer from further use of the particular machines; an irrevocable license to use them will be implied: *Blauvelt* v. *Interior Conduit & Insulation Co.*, (Circuit Court of Appeals, Second Circuit,) 80 Fed. Rep. 906.

Contributory Infringement

One who makes and sells one element of a patented combination, with the intent and for the purpose of bringing about its use in such a combination, is guilty of contributory infringement, and is equally liable with him

who in fact organizes the complete combination: *Thomson-Houston Electric Co.* v. *Ohio Brass Co.*, (Circuit Court of Appeals, Sixth Circuit,) 80 Fed. Rep. 712, affirming 78 Fed. Rep. 139, 1896.

The principle of this case is settled by an unbroken chain of authority: *Wallace* v. *Holmes*, 9 Blatchf. (U. S.) 65, 1871; *Renwick* v. *Pond*, 5 Fish. Pat. Cas. 569, 1872; *Turrell* v. *Spaeth*, 8 O. G. 986, 1875; *Richardson* v. *Noyes*, 10 O. G. 507, 1876; *Rumford Chem. Works* v. *Hooker*, 10 O. G. 289, 1876; *Bowker* v. *Dows*, 3 Ban. & Ard. Pat. Cas. 518, 1878; *Boyd* v. *Cherry*, 4 McCrary, (U. S.) 70, 1883; *Cotton Tie Co.* v. *Simmons*, 106 U. S. 89, 1882; *Schneider* v. *Pountney*, 21 Fed. Rep. 399, 1884; *Travers* v. *Beyer*, 26 Fed. Rep. 450, 1886; *Alabastine Co.* v. *Payne*, 27 Fed. Rep. 559, 1886; *Geis* v. *Kimber*, 36 Fed. Rep. 105, 1888; *Lea* v. *Northwestern Stove Repair Co.*, 50 Fed. Rep. 202, 1892; *Thomson-Houston Electric Co.* v. *Kelsey Electric Ry. Specialty Co.*, 75 Fed. Rep. 1005, 1896, modifying 72 Fed. Rep. 1016, 1896.

But the mere fact that the parts thus manufactured may be used for an improper purpose is not sufficient to prove contributory infringement; it must be proved that they are intended to be so used, or that they cannot be used otherwise. *Barnes* v. *Straus*, 9 Blatchf. (U. S.) 553, 1872; *Keystone Bridge Co.* v. *Phoenix Iron Co.*, 5 Fish. Pat. Cas. 468, 1872; *Saxe* v. *Hammond*, 1 Holmes, (U. S.) 456, 1875; *Maynard* v. *Pawling*, 3 Fed. Rep. 711, 1880; *Campbell* v. *Kavanaugh*, 20 Blatchf. (U. S.) 256, 1882; *Snyder* v. *Bunnell*, 38 O. G. 1130, 1886; *Bliss* v. *Merrill*, 42 O. G. 97, 1887.

Police Power, Restriction on Sale

A statute, (Stat. Ky. § 4223,) requiring itinerant vendors of patent rights to have written across the face of the notes executed to them in payment therefor the word "Peddler's note," is a valid exercise of the police power of the state, and does not conflict with the federal laws: *Union Natl. Bk.* v. *Brown*, (Court of Appeals of Kentucky,) 41 S. W. Rep. 273.

Railroads, Receiver, Diversion of Income

The rule that income wrongfully applied by a receiver to the payment of interest on mortgages, or the improvement of the property of the corporation, must be restored, cannot be applied when it is impossible to ascertain whether these expenditures have been made out of the income, or out of money borrowed: *Central Trust Co. of N. Y.* v. *East Tenn. V. & G. R. R. Co.*, (Circuit Court of Appeals, Sixth Circuit,) 80 Fed. Rep. 624.

Crossings, Collision with Electric Car, Degree of Care, Signals

The Supreme Court of New Jersey has decided, that when a railroad company fails to give the proper signals of the approach of a train, and a collision ensues with an electric street railway car, the former company cannot recover from the street railway company for losses due to the collision, if its failure to give the signals contributed thereto; that the fact that the two companies have a mutual agreement providing for a derailing switch on the tracks of the electric railway, as a precaution against collision at that crossing, and also providing, that before an electric car shall be permitted to pass over the crossing the conductor of that car who shall be operating the derailing switch shall look in both directions, and listen for the approach of railroad trains, does not excuse the railroad company from giving the statutory signals as a warning of approaching trains; and that when the neglect to give such signals appears to have contributed to the collision, the railroad company cannot recover against the electric street railway company, although the conductor of the electric car who operated the derailing switch was negligent in failing to look in both directions, and to listen for approaching trains: *N. Y. & G. L. Ry. Co.* v. *N. J. Electric Ry. Co.*, 37 Atl. Rep. 627.

Electric Railroads

A railroad upon which electricity is used as the motive power is a railroad, within a statutory provision (Code Ala., 1886, § 1145,) that when the tracks of two railroads cross each other, engineers and conductors must cause the trains of which they are in charge to come to a full stop within one hundred feet of the crossing, and not proceed until they know the way to be clear, the train on the railroad having the older right of way being entitled to cross first: *Louisville & N. R. R. Co.* v. *Anchors*, (Supreme Court of Louisiana,) 22 So. Rep. 279.

Schools, Reinstatement of Pupil, Mandamus, Sufficiency of Petition

A petition in mandamus, which seeks to compel the principal, the superintendent, and the trustees of a school to reinstate a boy in the school, is insufficient when it does not set forth all the facts, so that it might appear whether or not the suspension of the boy was wrongful, and there is no averment that application was made to any of the school authorities to have the boy reinstated: *Cochran* v. *Patillo*, (Court of Civil Appeals of Texas,) 41 S. W. Rep. 537.

Sheriff, Liability for Tort of Deputy

Under a statute, (Stat. Ky. § 4141,) which provides that a sheriff shall be liable on his bond "for any misconduct or default of his deputy," a sheriff is liable for the tortious act of his deputy in unnecessarily and maliciously placing handcuffs on a prisoner, and leading him through the streets of a city while thus handcuffed: *Shields* v. *Pflanz*, (Court of Appeals of Kentucky,) 41 S. W. Rep. 267.

Specific Performance, Illegal Contract, Public Policy

An agreement between two rival applicants for a street railway franchise to combine in order to prevent competition between themselves or by others in procuring the franchise, and to avoid the imposition of conditions by the municipal authorities, is void as against public policy; and equity will not compel the specific performance of such a contract, so as to compel one of the parties to share with the others the fruits of their combination: *Hyer* v. *Richmond Traction Co.*, (Circuit Court of Appeals, Fourth Circuit,) 80 Fed. Rep. 839.

Subrogation, Insurance

An insurance company cannot be subrogated in case of loss to the insured's right of action against one who sold him the insured property through fraudulent misrepresentations of its value: *Farmers' Fire Ins. Co.* v. *Johnston*, (Supreme Court of Michigan,) 71 N. W. Rep. 1074.

Suits Against State, Revival of Judgment

According to a recent decision of the Supreme Court of Louisiana, the authority to sue the state, granted by the legislature, includes also the authority to prosecute the suit to judgment, and the authority to keep the judgment in force; and consequently to revive the judgment by action before it is barred by prescription: *Carter* v. *State*, 22 So. Rep. 400.

Torts, Responsibility of Father for Acts of Child

The Court of Civil Appeals of Texas holds that a father who does not permit his minor son to use a gun is not responsible in damages for the act of the son in carelessly and purposely shooting at and injuring a companion, while out hunting with an air-gun, without his father's knowledge: *Ritter* v. *Thibodeaux*, 41 S. W. Rep. 492.

The purchase of a toy air-gun by a father for his child is not an act of culpable negligence, since it is not obviously and intrinsically dangerous; and consequently the father is not

liable for the wrongful act of another boy, who obtains it without his knowledge or consent, and uses it so as to injure another: *Chaddock* v. *Plummer*, 88 Mich. 225, 1891; *Harris* v. *Cameron*, 81 Wis. 239, 1892.

Property Rights, Dead Bodies

The father of a child, who is its natural guardian, has such a right to its dead body that he may maintain an action against one to whom he entrusted the child for treatment, and who, without his consent, performed an autopsy on the dead body: *Burney* v. *Children's Hospital in Boston*, (Supreme Judicial Court of Massachusetts,) 47 N. E. Rep. 401.

A widow may recover for the unlawful mutilation of her deceased husband's body by an unauthorized autopsy or dissection: *Larson* v. *Chase*, 47 Minn. 307, 1891; *Foley* v. *Phelps*, 1 App. Div. (N. Y.) 551, 1896; and a husband may recover for the unlawful dissection of the body of his wife: *Anon.*, 3 Chic. L. News, 378, 1871. But in the absence of proof of fraudulent or malicious motive, neither a coroner, who has the power of ordering an autopsy, nor the physician who performs it by his order, can be held liable therefor: *Young* v. *College of Physicians & Surgeons*, 81 Md. 359, 1895.

Place of Amusement, Ejection

A patron of a place of amusement, who has paid his admission fee, and has not by his conduct forfeited his right to remain, is not bound to leave on request of the proprietors; if he refuses to leave, they have no right to eject him; he is entitled to resist ejection with all the force necessary to protect himself; and if they do eject him, he can recover damages: *Cremore* v. *Huber*, (Supreme Court of New York, Appellate Division, Second Department,) 45 N. Y. Suppl. 947.

Unfair Competition, Advertising

According to a recent decision by Coxe, Dist. J., in the Circuit Court for the Southern District of New York, "where the goods of a manufacturer have become popular not only because of their intrinsic worth, but also by reason of the ingenious, attractive and persistent manner in which they have been advertised, the good-will thus created is entitled to protection. The money invested in advertising is as much a part of the business as if invested in buildings, or machinery, and a rival in business has no more right to use the one than the other,—no more right to use the machinery by which the goods are placed on the market than the machinery which originally created them:" *Hilson Co.* v. *Foster*, 80 Fed. Rep. 896.

Ardemus Stewart.